

### REMARKS

Applicants have amended claim 1 and added new claim 27. Claims 2-7 and 9-26 have been withdrawn as being drawn to non-elected subject matter. These amendments have been made to place them in better form for examination and to further obviate the 35 U.S.C. §112 rejections as set forth in the Office Action dated March 24, 2004. It is believed none of these amendments constitute new matter. It is submitted that these amendments obviate the rejections. Withdrawal of these rejections is respectfully requested.

The Examiner has rejected claims 1 and 8 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Applicants have amended claim 1 to recite the limitation of "at least 90%."

Applicants submit that once a DNA sequence is described, that inherently describes a protein sequence that has at least 90% identity. Thus, it is submitted that the application provides a written description of a protein derivative as set forth in the claims and that Applicants were in possession of the claimed invention at the time of filing. Withdrawal of this rejection is respectfully requested.

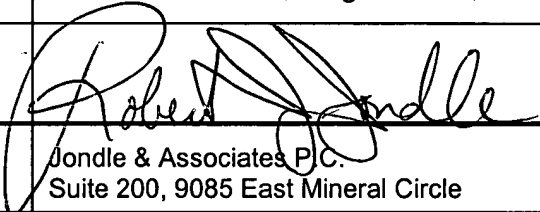
The Examiner has rejected claims 1 and 8 under 35 U.S.C. § 112, first paragraph for lack of enablement. Applicants have amended claim 1 to recite the limitation of "at least 90%" and have added new claim 27 which further limits claim 1 to "95-98%." It is submitted that claims 1 and 8 are fully enabled by the specification. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 1 and 8 under 35 U.S.C. §102(b) as anticipated by Bloksberg, L., et al., U.S. Patent 5,850,020. Applicants submit that the nucleotide sequences described by this application are less than 99% homologous with that described in Bloksberg. Analysis of the first 120 nucleotides of each of the three sequences for CH3 described by Applicants (SEQ ID NOs: 1-3) shows a range of 22.5% to 28% homology with the one sequence (SEQ ID NO: 4) described by Bloksberg. This range of homology is true for the Bloksberg sequence as listed and

also the complement, reverse complement and reverse sequence of the Bloksberg sequence. Withdrawal of this 35 U.S.C. §102(b) rejection is respectfully requested.

The Examiner has rejected claims 1 and 8 under 35 U.S.C. §102(b) as anticipated by Siminszky, B., et al. Applicant has amended claim 1 to state "at least 90%", which obviates this rejection since Siminszky, B. et al. has only 85.5% sequence identity to SEQ ID NO: 6. Withdrawal of this rejection is respectfully requested.

In view of the above amendments and remarks, it is submitted that the claims satisfy the provisions of 35 U.S.C. §§102 and 112. Reconsideration of this application and early notice of allowance is requested.

|                                |  |           |              |          |                    |
|--------------------------------|--|-----------|--------------|----------|--------------------|
| <b>RESPECTFULLY SUBMITTED,</b> |  |           |              |          |                    |
| NAME AND<br>REG. NUMBER        | Robert J. Jondle, Reg. No. 33,915  |           |              |          |                    |
| SIGNATURE                      |  |           |              | DATE     | September 20, 2004 |
| Address                        | Jondle & Associates P.C.<br>Suite 200, 9085 East Mineral Circle                    |           |              |          |                    |
| City                           | Centennial   | State     | CO           | Zip Code | 80112              |
| Country                        | U.S.A.   | Telephone | 303-799-6444 | Fax      | 303-799-6898       |